REMARKS

These remarks are in response to the Office Action mailed February 3, 2006. Claims 1-21 are pending in the application. Claims 1, 2, and 11-21 are withdrawn from consideration as being drawn to non-elected matter. Claim 3 has been amended to more particularly point out Applicants' invention and to facilitate prosecution, and claim 10 has been amended to correct a grammatical error. No new matter is believed to have been introduced.

I. REJECTION UNDER 35 U.S.C. §112, SECOND PARAGRAPH

Claims 3-10 stand rejected under 35 U.S.C. §112, second paragraph as allegedly failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants respectfully traverse this rejection.

Claim 3 stands rejected under 35 U.S.C. §112, second paragraph as allegedly being vague and indefinite because it is drawn to non-elected embodiments. The Office alleges that the election made by Applicants without traverse was to the peptide of claim 3(b), "a peptide comprising a sequence as set forth in SEQ ID NO:2 from about amino acid 31-131". Further, the Office asserts that fragments, equivalents and variants are non-elected subject matter which confound the claims.

Applicants respectfully bring the attention of the Office to the restriction requirement, mailed September 28, 2005, wherein Group III was restricted as follows:

> **Group III** – Claims 3–10, drawn to a method for inhibiting the growth of a bacterium or yeast comprising contacting the bacterium or yeast with a peptide with antimicrobial activity, comprising an amino acid sequence selected from the group consisting of (a) an amino acid sequence of SEQ ID NO: 3, and (b) an amino acid sequence of SEQ ID NO: 2 from about amino acid 31–131; classified in class 530, subclass 350; class 514, subclass 2.

> The claims in Group III contain reference to patentably distinct and/or independent peptides, see claim 3 for each of X 1 through X 31 in SEQ ID NO:3. Should Group III be elected, applicant is required to select one residue to define the sequence of SEQ ID NO:3 in claim 3; or select one sequence by SEQ ID NO:2 (e.g., claim 3(b)). Any change of amino acid residue at any one or more positions in the sequence is considered, absent factual data to the contrary, a distinct peptide. Because the peptides used in the method are considered patentably distinct, this is not a species election.

Applicants elected Group III, claims 3-10, and (b) amino acid sequence of SEQ ID NO: 2 from about amino acid 31–131; classified in class 530, subclass 350; class 514, subclass 2, as required by the Office. Applicants have reviewed claim 3 and find no recitation of "fragments, equivalents and variants" as alleged by the Office. Thus, it is unclear to Applicants where the proposed element is being recited such that it renders the claim indefinite. As currently recited, claim 3 is clearly definite. Accordingly, Applicants request withdrawal of the rejection.

II. REJECTION UNDER 35 U.S.C. §102

Claims 3-9 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by Boman *et al.* (WO 96/08508, March 21, 1996). Applicants respectfully traverse this rejection.

Boman *et al.* teaches the polypeptides of the C-terminus of SEQ ID NO:2, wherein Applicants invention is drawn to SEQ ID NO:3 and the peptide of SEQ ID NO:2 from about amino acid 31 to 131, the N-terminus of SEQ ID NO:2. Applicants have amended claim 3 to more particularly point out Applicants' invention and to facilitate prosecution. Boman *et al.* does not teach or suggest the sequences claimed by Applicants have antimicrobial activity. In fact, Boman *et al.* teach a different domain for use in treating bacterial infections, *i.e.*, the C-terminal FALL domain. Thus, Boman cannot anticipate Applicants' invention as the

reference does not teach or suggest each and every element of Applicants' claim. Accordingly, the rejection may be properly withdrawn.

III. REJECTION UNDER 35 U.S.C. §103

Claim 10 stands rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Boman *et al.* (WO 96/08508). Applicants respectfully traverse this rejection.

For the same reasons set forth above with respect to Boman *et al.* under the §102 rejection, Boman *et al.* cannot render Applicants' invention obvious. A *prima facie* case of obviousness has not been set forth because the primary reference fails to teach or suggest each element of Applicants' claimed invention. Accordingly the rejection may be withdrawn.

For the reasons set forth above, it is believed that this case is in condition for allowance. Applicants accordingly request that this Amendment be entered and that the rejections under 35 U.S.C. § 112, Second Paragraph, 35 U.S.C. §102(b), and 35 U.S.C. §103(a) be carefully reconsidered. In the event that there are any questions relating to this application, it would be appreciated if the Examiner would telephone the undersigned concerning such questions so that the prosecution of this application may be expedited.

Respectfully submitted,

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